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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 GANO EXCEL (U.S.A.) INC., a
13 Washington corporation,

14 Plaintiff,

15
16 v.

17 GANOLIFE INTERNATIONAL, INC., a
18 California corporation; JOVEN
19 CABASAG, an individual; and SHAWN
20 MIR, an individual.

21 Defendants.
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Case No.:
CV 14-0320 E

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATION OF COMPUTER FRAUD
AND ABUSE ACT.**

DEMAND FOR JURY TRIAL

1 Plaintiff GANO EXCEL (U.S.A.) INC. ("Gano Excel" or "Plaintiff") hereby
2 states and alleges as follows;

3
4 **INTRODUCTION**

5 1. This case is about corporate theft and vandalism which violates the
6 Computer Fraud and Abuse Act, 18 U.S.C 1030, et seq. – a criminal statute that
7 provides for a private right of action at subd. (g).
8

9 2. The defendants, without authorization, vandalized Gano Excel's computer
10 servers, deleted the emails contained on the servers, and stole a confidential computer
11 database, which they are now using to unfairly compete with Gano Excel.
12

13 3. The emails were destroyed by the defendants to cover up their unlawful
14 unfair competition activities.
15

16 4. Gano Excel is the United States subsidiary of an international
17 conglomerate that sells coffee infused with the ganoderma mushroom. Ganoderma is
18 an extract from the Japanese Reisha mushroom which, when infused into the coffee,
19 provides certain health benefits not present in standard coffee products. Therefore, the
20 Gano Excel coffee is known as a healthier coffee. The parent company is a Malaysian
21 company with its principle place of business in Malaysia.
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24 5. Gano Excel sells its products through a network of independent
25 distributors who are paid a commission for such sales and who are also paid multiple
26 levels of commissions for sales by others who are aligned under them in a sales
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1 organization matrix. This sort of sales organization is often referred to as “multi-level
2 marketing” or “network marketing.” Other well-known examples of companies that
3 utilize this sales structure are Amway and Herbalife.
4

5 6. Gano Excel maintains a confidential computer database containing vital
6 information about its network of independent distributors, such as who they are, how to
7 calculate their commissions, and where they are each aligned in the sales organization
8 matrix.
9

10 7. In 2012 (and perhaps as early as 2011) Gano Excel’s CEO, Joven Cabasag,
11 along with others orchestrated a coup to take over the company. In early 2013, the
12 Malaysian owners arrived at the Gano Excel offices in Irwindale, California and found
13 them to be locked and abandoned. When they were able to gain entry, they found the
14 offices ransacked, documents shredded, the inventory of coffee gone, and more than a
15 million dollars had been withdrawn by Mr. Cabasag and his wife from the company
16 bank accounts. They also found that all of the computer servers were missing.
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19 8. Gano Excel later discovered that Cabasag had opened up a competing
20 company, Ganolife International, Inc. (“Ganolife”), which, as Gano Excel does, sells
21 through the network marketing format the same products sold by Gano Excel. In
22 addition, virtually all of Gano Excel’s employees were taken and now work at Ganolife
23 and Ganolife took many of the Gano Excel distributors.
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26 9. Gano Excel brings this lawsuit after discovering that its former CEO,
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1 Joven Cabasag, in conjunction with computer consultant Shawn Mir and others, stole
2 Gano Excel's confidential computer database. Cabasag and Mir are now using that
3 database as employees of Ganolife International, Inc., to compete with Gano Excel.
4

5 10. Joven Cabasag and computer consultant Shawn Mir also deleted Gano
6 Excel's e-mail server in an unsuccessful attempt to cover their tracks.
7

8 THE PARTIES

9 11. Gano Excel is and, at all relevant times herein was, a corporation formed
10 under the laws of the state of Washington with its corporate headquarters located in the
11 city of Irwindale, county of Los Angeles, state of California.
12

13 12. Defendant Ganolife International, Inc. ("Ganolife") is a California
14 corporation with its corporate headquarters in the city of Ontario, County of San
15 Bernardino, State of California.
16

17 13. Defendant Joven Cabasag ("Cabasag") is an individual who resides in the
18 city of Glendale, county of Los Angeles.
19

20 14. Defendant Shawn Mir is an individual who resides in the state of
21 California. Shawn Mir is the computer consultant and agent of Cabasag and Ganolife.
22

23 JURISDICTION AND VENUE

24 15. This a complaint for violation of the Computer Fraud and Abuse Act, 18
25 U.S.C. 1030, et seq., and this Court has subject-matter jurisdiction over this action
26 pursuant to 18 U.S.C. § 1030(g) and 28 U.S.C. § 1331.
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1 16. This court has personal jurisdiction over each of the defendants as alleged
2 throughout this complaint.

3 17. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a
4 substantial part of the events giving rise to the dispute occurred in this district.
5

6 **GENERAL ALLEGATIONS**
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8 18. On January 13, 2013, the owners of Gano Excel (who are Malaysian) arrived
9 in the United States because they had heard rumors of a corporate coup. When they went
10 to the Gano Excel corporate offices in Irwindale they discovered them to be locked and
11 deserted. When they were able to gain access to the offices, they found that the company's
12 entire inventory of coffee was gone, documents shredded, and that the computer
13 equipment including at least seven servers were missing. The offices were ransacked.
14
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16 19. Through significant efforts, the Gano Excel owners were able to track down
17 their computer servers at a leased server hosting center in downtown Los Angeles, called
18 IX2. The hosting center lease, however, was not under the name Gano Excel (even
19 though the servers belonged to Gano Excel), but was leased under the name of Gano
20 Holdings, the personal company of, and owned by, Joven Cabasag and his wife. The
21 importance of these servers cannot be underestimated. They hold all of Gano Excel's
22 databases consisting of the identities, contact information, rank, sales history, commission
23 history, and product order history of all of Gano Excel's United States based independent
24 distributors. Without unfettered access to these servers, Gano Excel is unable to pay
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1 weekly commissions to its thousands of distributors. Moreover, anyone with access to
2 this information would be able to contact the Gano Excel distributors and have the
3 information necessary to lure them away.
4

5 20. The information regarding the Gano Excel distributors took many years to
6 compile, was confidential and has significant value to any third party that seeks to
7 compete with Gano Excel. As such, the information in the Gano Excel data base is
8 proprietary to, and constitutes a trade secret of Gano Excel.
9

10 21. Immediately upon taking control of the Gano Excel servers, Cabasag and
11 Ganolife began contacting distributors and soliciting them to leave Gano Excel and join
12 Ganolife.
13

14 22. Joven Cabasag also took Gano Excel's domain name, so that Gano Excel
15 was unable to communicate with its distributors by e-mail or on its website.
16

17 23. Defendant Ganolife posted a webpage, www.ganolifecafe.com, announcing
18 in large, 36 point type, "GO FOR IT" and showing a fish jumping from a Gano Excel
19 fishbowl into a Ganolife fishbowl.
20

21 24. Ganolife posted on its webpage a sign-up sheet for Gano Excel distributors.
22 The sign-up sheet specifically asked for the distributors' Gano Excel ID number so that
23 the distributor would have the same rank and compensation with Ganolife. This
24 information could only have been known if Ganolife was using the Gano Excel's
25 confidential database.
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1 25. The defendants started heavy solicitation of the Gano Excel distributors to
2 convince them to join Ganolife. They were so brazen as to solicit distributors to join
3 Ganolife at Gano Excel sponsored events. At these events, the defendants would
4 announce that Gano Excel was “re-launching”; that Gano Excel will be entering a “Phase
5 2”; and that there will be a “seamless transition” to Ganolife. In addition, the defendants
6 would fly in top Gano Excel distributors or contact them and use lies to convince them to
7 leave Gano Excel. These lies included telling distributors that Gano Excel does not pay
8 commissions (even though the defendants knew it was them who prevented the
9 commissions from being paid), telling distributors that Gano Excel’s products were
10 defective and were infused with corn filler and cockroaches, and telling distributors that
11 Gano Excel would be out of business soon.

12 26. The defendants also used Gano Excel’s confidential database to send e-mails
13 to its customers and distributors promoting Ganolife and announcing that distributors will
14 enjoy the “same position with the same organization” at Ganolife as at Gano Excel and
15 that Ganolife product supposedly “replaces” Gano Excel product.

16 **UNAUTHORIZED DELETION OF THE EMAIL**

17 27. On January 25, 2013, after discovering the location of their computer
18 servers, Gano Excel sent a letter to Joven Cabasag’s attorneys telling them that Gano
19 Excel’s officers would be arriving at the IX2 co-location facility on the following day,
20 January 26, 2013, at 11:00am to retrieve their computer servers.

1 28. Gano Excel did arrive at the co-leasing center at 11 a.m. on January 26, 2013
2 and did retrieve its computer servers. However, after reviewing the data on the servers,
3 Gano Excel discovered that the email server (i.e. the server that contained the Gano Excel
4 emails) was missing.
5

6 29. Gano Excel retained computer forensic experts to investigate the absence of
7 the email server and the emails. After analyzing the computers servers, the forensic
8 experts discovered that on January 26, 2013, at 10:19am (i.e. 41 minutes before Gano
9 Excel's representatives arrived) its e-mail server had been deleted. When it was deleted,
10 Gano Excel's e-mail server was located on a computer at the IX2 co-location facility in
11 downtown Los Angeles and the person who deleted it logged into the computer using the
12 username called "root."
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16 30. Shawn Mir is a person who had the password for the "root" account on Gano
17 Excel's e-mail server computer, which he obtained while working as a computer
18 consultant for Gano Excel.
19

20 31. Shawn Mir was the only person at the IX2 co-location facility in downtown
21 Los Angeles when Gano Excel's officers arrived on January 26, 2013 at approximately
22 11:00am.
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24 32. Based on the above facts, Gano Excel herein alleges that Shawn Mir was the
25 person who deleted its e-mail server.
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1 33. Joven Cabasag is now the CEO of Ganolife and Shawn Mir now works as a
2 computer consultant for Ganolife.

3 34. On information and belief, Shawn Mir, as the computer consultant for
4 Cabasag and Ganolife, would not have deleted the emails except upon the direction from
5 Cabasag.
6

7 35. The purpose for deleting the emails was to cover-up Cabasag's involvement
8 to destroy and take over Gano Excel as, upon information and belief, many of his
9 communications with his cohorts involved in the coup were by email.
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11
12 **FIRST CLAIM FOR RELIEF**

13 **For Violation of 18 U.S.C. 1030(a)(5)**

14 *By Gano Excel (U.S.A.) Inc. against all Defendants.*

15 36. Plaintiff incorporates herein, by this reference, each and every allegation
16 contained in the preceding paragraphs, as though fully set forth herein.
17

18 37. Gano Excel's e-mail server was located on a protected computer pursuant to
19 18 U.S.C. § 1030, et seq. because it used its e-mail server to exchange interstate and
20 foreign communications.
21

22 38. Shawn Mir was never authorized by Gano Excel to delete its e-mail server.
23

24 39. Shawn Mir violated the Computer Fraud and Abuse Act, 18 U.S.C. §
25 1030(a)(5)(A) by knowingly causing the transmission of a command to delete the e-mail
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1 server, and as a result of such conduct, intentionally caused damage without authorization,
2 to Gano Excel's e-mail server.

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4 40. Shawn Mir violated the Computer Fraud and Abuse Act, 18 U.S.C. §
5 1030(a)(5)(B) by intentionally accessing Gano Excel's e-mail server without
6 authorization, and as a result of such conduct, recklessly caused damage to the e-mail
7 server by deleting such server.
8

9 41. Shawn Mir violated the Computer Fraud and Abuse Act, 18 U.S.C. §
10 1030(a)(5)(C) by intentionally accessing Gano Excel's e-mail server without
11 authorization, and as a result of such conduct, caused damage to the e-mail server and loss
12 to Gano Excel. Gano Excel's loss was a result of its inability to send, receive, and access
13 its e-mails. The amount of such loss exceeds \$5,000 and the exact amount shall be proved
14 at trial.
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17 42. Ordinary tort-related vicarious liability rules apply to claims brought under
18 the Computer Fraud and Abuse Act for the reasons explained in *Charles Schwab & Co.,*
19 *Inc. v. Carter*, 04 C 7071, 2005 WL 2369815 (N.D. Ill. Sept. 27, 2005).
20
21

22 43. Joven Cabasag is vicariously liable for Shawn Mir's various violations of 18
23 U.S.C. § 1030(a)(5) because he directed Shawn Mir to delete Gano Excel's e-mail server
24 in an effort to cover up the misconduct which is alleged herein.
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1 44. Ganolife is vicariously liable for Shawn Mir's violation of 18 U.S.C. §
2 1030(a)(5) because Shawn Mir and Joven Cabasag were acting as agents of Ganolife
3 when they engaged in the above-described acts.
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5 **SECOND CLAIM FOR RELIEF**

6 **For Violation of 18 U.S.C. 1030(a)(4)**

7 *By Gano Excel (U.S.A.) Inc. against all Defendants.*
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9 45. Plaintiff incorporates herein, by this reference, each and every allegation
10 contained in the preceding paragraphs, as though fully set forth herein.
11

12 46. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C. §
13 1030(a)(4) by knowingly, and with intent to defraud Gano Excel, accessing a protected
14 computer, without authorization or by exceeding authorized access to such a computer,
15 and by means of such conduct furthered the intended fraud and obtained one or more
16 things of value, including but not limited to Gano Excel's confidential computer database.
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19 47. Joven Cabasag accessed a protected computer because Gano Excel used its
20 confidential computer database to facilitate interstate and foreign commerce.
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22 48. Joven Cabasag's access to Gano Excel's confidential computer database
23 exceeded the authorization that he was granted because Gano Excel never authorized him
24 to use that database to operate a competing business. Using Gano Excel's confidential
25 computer database to operate a competing business is an express breach of Gano Excel's
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1 Policies and Procedures and Joven Cabasag agreed to abide by those Policies and
2 Procedures.

3
4 49. Joven Cabasag knowingly and with intent to defraud told repeated lies to
5 Soon Seng Leow ("Leow"), Gano Excel's President. During last six months of 2012,
6 Leow had multiple conversations with Joven Cabasag regarding how a person named
7 Christopher Tidwell ("Tidwell") was engaging in efforts to take over Gano Excel's
8 business in various foreign countries. In each and every one of these conversations Joven
9 Cabasag assured Leow that he was loyal to Gano Excel and would do all he could to fight
10 Tidwell's efforts. Joven Cabasag never intended to fight Tidwell's efforts and was, in fact,
11 plotting with Tidwell to steal Gano Excel's business in the United States. Nonetheless,
12 Leow accepted Joven Cabasag's assurances and believed that he was loyal to the
13 company.
14

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17 50. In 2013, Leow learned that both Tidwell and Cabasag are in fact business
18 partners and together own and operate Ganolife.

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20 51. Joven Cabasag furthered the intended fraud by remaining the CEO of Gano
21 Excel until early 2013 and, in that role, he successfully used Gano Excel's confidential
22 database to recruit independent distributors to join Ganolife.
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25 52. As a result of this fraud, Gano Excel has incurred millions of dollars of
26 losses.
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53. Shawn Mir is vicariously liable for Joven Cabasag's violation of 18 U.S.C. § 1030(a)(4) because Shawn Mir deleted Gano Excel's e-mail server in an effort by him to cover up Joven Cabasag's fraud.

54. Ganolife is vicariously liable for Joven Cabasag's violation of 18 U.S.C. § 1030(a)(4) because Shawn Mir and Joven Cabasag were acting as agents of Ganolife when they engaged in the above-described acts.

THIRD CLAIM FOR RELIEF

For Violation of 18 U.S.C. 1030(a)(2)(C)

By Gano Excel (U.S.A.) Inc. against all Defendants.

55. Plaintiff incorporates herein, by this reference, each and every allegation contained in the preceding paragraphs, as though fully set forth herein.

56. Joven Cabasag has violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)(C), by intentionally accessing Gano Excel's confidential computer database, without authorization or by exceeding authorized access to such a computer, and by obtaining information from that database.

57. Joven Cabasag was not authorized to access Gano Excel's confidential computer database for the purpose of competing with Gano Excel and he expressly agreed to not use the database for such purpose when he agreed to abide by Gano Excel's written Policies and Procedures.

1 58. Joven Cabasag obtained information from Gano Excel's confidential
2 computer database which he is now using as the CEO of Ganolife to help Ganolife
3 compete with Gano Excel.
4

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a trial by jury.
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8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment in their favor and against
10 Defendants as follows:
11

- 12 1. For a preliminary and permanent injunction restraining Defendants, their
13 officers, agents, servants, employees, and attorneys, and those acting in
14 concert or participation with any of them from:
15 a. accessing or utilizing Gano Excel's database in any way;
16 b. soliciting any person to be a distributor or customer of Ganolife by
17 utilizing any information contained within Gano Excel's database; or
18 c. destroying or deleting any of the Gano Excel data; or
19 d. utilizing or disclosing to any person any of the information contained
20 within Gano Excel's database including, without limitation, the
21 following:
22 i. any contact information of Gano Excel's distributors and/or
23 customers;
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- ii. any product ordering information of Gano Excel's distributors and/or customers;
- iii. any volume of sales information for Gano Excel's distributors and/or customers;
- iv. any credit card information of Gano Excel's distributors and/or customers;
- v. any product order history for Gano Excel's distributors and/or customers;
- vi. any of Gano Excel's customer order history;
- vii. any of Gano Excel's distributor and/or customer credit card information; or
- viii. any of Gano Excel's distributor and/or customer shipping information.

2. For compensatory damages in an amount to be proven at trial;
3. For restitution and disgorgement of ill-gotten gains unjustly obtained and retained by Defendants through the acts complained of here;
4. For prejudgment interest;
5. For an accounting;
6. For an order awarding Gano Excel its attorney's fees and costs;
7. For such other and further relief as the Court may deem proper and just.

1 Dated: December 28, 2013

WELLMAN & WARREN LLP

2 By: _____

3 Scott W. Wellman
4 Derek Banducci
5 Bimali Walgampaya
6 Attorneys For Plaintiff
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